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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/619,806 | 07/15/2003 | Ralph Heinzen | H422.12-0008 | 7670 |
| 164 7590 10/04/2007 KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002 | | | EXAMINER PHAM, HOA Q | |
| | | | ART UNIT 2886 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,806

Applicant(s)

RALPH HEINZEN

Examiner

Hoa Q. Pham

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f):
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 10/23/03
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Drawings

1. Drawings filed on 12/10/03 have been accepted.

Specification

2. The continuation data in page 1 of the present specification needs to be updated.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. Claim 1, line 10 has no antecedent basis for "that deterioration"

b. Claims 2-6 are dependent on claim 1, therefore, inherit the deficiency of claim

1.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir.

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1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1, 4, 7, 9, 11, 13, 15-16, 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,595,523. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between the present claimed invention and what was claimed in the patent is that the "seal body" of the present invention is more readily abraded than either of the two members and has not abraded beyond a selected depth, while the patent claims teach that the "sealing means" more readily deteriorated than one of the members and has not deteriorated beyond a specified degree; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to determine the leakage of the fluid on the basis of abrasion instead of the deterioration because the device would function in the same manner.

7. Claims 1, 4, 7, 9, 11, 13, 15, 16, 18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,615,639. Although the conflicting claims are not identical, they are not

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patentably distinct from each other because the difference between the present claimed invention and what was claimed in the patent is that the "seal body" of the present invention is more readily abraded than either of the two members and has not abraded beyond a selected depth, while the patent claims teach that the "sealing means" more readily deteriorated than one of the members and has not deteriorated beyond a specified degree; however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to determine the leakage of the fluid on the basis of abrasion instead of the deterioration because the device would function in the same manner.

8. Claims 3, 6, 8, 10, 12, 14, 17 and 19-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No. 6,595,523 in view of Cohen (US pat. 6,080,982). Heinzen('523) does not explicitly teach that the sensor device can be an optical sensor unit includes both light source and detector; however, such a feature is known in the art as taught by Cohen. Cohen, from the same field of endeavor, discloses an embedded wear sensor in which the leakage of the fluid is determined on the basis of the optical sensor unit (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the sonic sensor unit of patent by the optical sensor unit of Cohen for the same purpose of determining the leakage of the fluid. A substitution one for another is generally recognized as being within the level of ordinary skill in the art.

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9. Claims 2, 3, 5, 6, 8, 10, 12, 14, 17 and 19-23 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,615,639 in view of Cohen (6,080,982). Heinzen ('639) does not explicitly teach that the sensor device can be an optical sensor unit includes both light source and detector; however, such a feature is known in the art as taught by Cohen. Cohen, from the same field of endeavor, discloses an embedded wear sensor in which the leakage of the fluid is determined on the basis of the optical sensor unit (see figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace the dielectric sensor unit of patent by the optical sensor unit of Cohen for the same purpose of determining the leakage of the fluid. A substitution one for another is generally recognized as being within the level of ordinary skill in the art.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Following references relate to device for detecting leakage of the fluid: Sanger et al (5,452,082), Dohmen (3,679,277), Farquharson et al (5,120,129), Winterton et al (5,074,663), Discenzo (6,980,298) and Burkhard (3,597,096).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hoa Q. Pham whose telephone number is (571) 272-2426. The examiner can normally be reached on Monday through Friday, 8:00AM TO 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on (571) 272-2287. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Hoa Q. Pham
Primary Examiner
Art Unit 2886

HP
September 30, 2007